

REMARKS

1. Finality of Office Action/Entry of Amendments

Kindly withdraw the finality of the Office Action for the reasons noted in the accompanying draft Petition Under 37 CFR §1.181(a)(1) to Withdraw Premature Final Rejection. Please call or otherwise advise the undersigned attorney in advance of JULY 16, 2005 whether finality will be withdrawn, since otherwise the undersigned attorney must submit the Petition by that date (which is the deadline for submission of the Petition).

Regardless of whether finality is maintained or withdrawn, the arguments set forth below clearly demonstrate why the current rejections are in error and why the claims should be allowed. Please note that if the present rejections need to be appealed, the issues noted in the Petition (and in the arguments below) will need to be addressed in any event. Thus, if any rejections are maintained, it may be beneficial for the Examiner and undersigned attorney to discuss the case via telephone to see if any issues can be simplified for appeal. Do not hesitate to call if any issues might be more rapidly resolved via telephone.

2. Claim Amendments

No claims have been canceled, added, or amended.

3. Arguments

As noted in the accompanying draft Petition, it is believed that the current rejections are erroneous and should be withdrawn in view of the arguments in Applicant's March 9, 2005 Response. These arguments are reproduced below, with further comments added in response to the "Response to Arguments" in the May 16, 2005 Final Office Action..

3.a. Section 1 of the Final Office Action: Rejection of Claims 1, 3-7, 10, 12, 24, 26, 28, 39-44, and 46-47 under USC §103(a) view of *Friedman et al.* (Multilayer Anode with Crossed Serpentine Delay Lines for High Spatial Resolution Readout of Microchannel Plate Detectors") and U.S. Patent 3,581,091 to *Meijer*

Kindly withdraw these rejections, which allege that:

Meijer discloses a particle detector having first and second anodes, wherein no structure is interposed between the anodes (*FIG. 2, element 2 and 5*) so the space between the anode is adaptably adjustable (*column 1, line 15-25 and column 2, line 32-37: The distance between the two anodes depends on the diameter of the anodes 2, 5*)...

(Page 3, May 16 2005 Final Office Action.) Regarding independent claim 1 (and its dependent claims 3 and 6), claim 24 (and its dependent claim 26), and independent claim 39 (and its dependent claims 42, 43, and 47), these claims are understood to be rejected as obvious in view of *Friedman* and *Meijer* because:

it would have been obvious for one having ordinary skill in the art at the time the invention was made to modify the detector disclosed by *Friedman et al.* such as no structure is interposed between the anodes so the space between the anodes is adaptably adjustable as disclosed by *Meijer*. The motivation for doing so would have been to obtain a spectrometer which makes more accurate determination possible as taught by *Meijer* (*column 1 lines 53-55*).

(Page 3, May 16 2005 Final Office Action.) The May 16 2005 Final Office Action further states that:

First of all, the applicants argued that *Meijer* does not teach or suggest adjustable spacing between the delay line anodes. The examiner responds that, as broadly interpreted, the claims are understood as the anodes adaptably mounted in a space, wherein the length of the space between the anodes is adjustable. As clearly shown in *FIG. 1*, since there is no fix structure between the anodes, an anode is free to relatively move from the other. In other words, the space between the anodes can be adjusted.¹

(Page 6, May 16 2005 Final Office Action.) These rejections are wrong in several respects.

¹ Note that the referenced "FIG. 1" is not identified as being from *Meijer* or *Friedman*. It is assumed that the Examiner is referring to *FIG. 1* of *Meijer*. If this is incorrect, please advise.

First, it appears that column 1 lines 15-25, column 2 lines 32-37, and FIGS. 1-2 of *Meijer* are cited for the proposition that *Meijer*'s "anodes" 2 and 5 (actually counters) are spaced to be adaptably adjustable.² However, *Meijer* does not in fact describe such an arrangement. Rather, *Meijer* plainly states that the counters are spaced by a distance equal to the diameter of the counters (here, 20 mm):

In the known arrangement, a neutron telescope, according to the above described principle, the distance between the scattering foil and the first counter and that between the two counters likewise is approximately equal to the diameter of the counters and a number of tantalum foils are used for limiting the proton beam. Typical values for the diameter of the counters are 1 to 2 cm.

Referring now to FIG. 1 in which the settings and the electrode supply wires are not shown, reference numeral 1 denotes a polyethelene foil, thickness 10 microns 2 is a silicon barrier layer counter. The thickness of 2 is 30 microns the diameter 20 mm. On the upper side of the disc, a number of electrode strips 3 of gold are vapor-deposited, thickness 0.3 micron, distance mutually 100 microns. On the lower side strips 4 of aluminum are provided so as to intersect the strips 3 at right angles.

At a distance of 20 mm. below the disc 2, the disc 5, thickness 1.5 mm., is arranged which likewise consists of silicon having at its upper side electrodes 6 of gold and at its lower side electrodes 7 of aluminum. The direction of a neutron beam is denoted by 8.

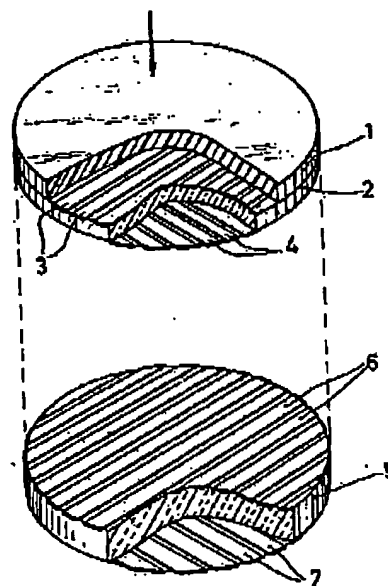


FIG. 1

Meijer requires this spacing between the anodes/counters, as in *Friedman*, since failure to precisely space the anodes/counters will result in impedance mismatch and degraded (or destroyed) signals. Note, for example, the discussion at page 8 line 24-page 9 line 16 of the present application; see also FIG. 4 of *Friedman* (showing required design thicknesses for the dielectric

² It may be useful to refer to Section 5 of the November 4, 2004 Response, which explained why the structures of U.S. Patent 3,581,091 to *Meijer* and U.S. Patent 3,529,161 to *Oosthoek* are not in fact delay line anodes.

layers separating the anodes, and the thickness error when the design was manufactured).³ Since the *Meijer* counters plainly do not have adjustable diameter – it does not even seem that such a feature could be possible – they plainly do not have adjustable spacing. *The Final Office Action does not address these points.*

Further, it is improper to interpret the *Meijer* drawings as disclosing adjustable counter spacing where the specification unambiguously describes them as *not* having this feature. See, e.g., *In re Mihalich*, 25 USPQ2d 1478, 1479 (Fed. Cir. 1992) (rejections based on Board's interpretation of drawings must be reversed in view of unambiguous passages in specification contradicting the Board's interpretation); *In re Andersen*, 223 USPQ 378, 380 (Fed Cir. 1984) (where the drawings are ambiguous, the teachings of the specification are controlling).⁴ Here, the *Meijer* drawings are explicitly described as being “diagrammatic” views of “essential elements” of the *Meijer* device, see column 2 lines 15-20, making it clear that they are simplified views, and the specification explicitly notes that the 20 mm-diameter counters are spaced by 20 mm. When the reference is fully and fairly read for all that it teaches, it is clear that *Meijer* does *not* show or suggest that “the space between the anodes can be adjusted,” as the Examiner asserts.

³ Note that in FIG. 4, the upper delay line anode is labeled as “upper board,” the lower anode is labeled by “lower board,” and the duroid 6002 layer therebetween maintains them at a fixed distance.

⁴ As stated by the Court of Appeals for the Federal Circuit in *Andersen*, “The only support for the appellant's position is found in one of the drawings in [the cited prior art reference] *Winder*. . . . The referenced drawing is merely a simplified schematic intended to provide a summary overview of *Winder*'s timing sequence. The timing ambiguity in this simplified drawing does not outweigh the consistent and unambiguous detailed teachings of the specification and mechanical drawings of the *Winder* patent. See *In re Chitayat*, 408 F.2 475, 478, 161 USPQ 224, 226 (CCPA 1969) “[p]atent drawings are not working drawings,” quoting *In re Wilson*, 312 F.2d 449, 454, 136 USPQ 188, 192 (CCPA 1963).”

Also, since *Meijer* is being used to modify *Friedman*, it is important to look to both references *in their entireties*, as required by MPEP 2141.02. Here, note that *Friedman* starts with two separate delay line anodes, just as *Meijer* uses two counters (see discussion at page 599 of *Friedman*) – but *Friedman* then bonds/fuses the two anodes together, to the design distance noted in FIG. 4, in order to avoid any variability in spacing. Consider: would one of ordinary skill truly regard it as obvious to modify *Friedman* as allegedly suggested by *Meijer* if *Friedman* first starts with an arrangement similar to *Meijer* (separate anodes/counters), but then attaches the anodes together so that they have a firmly fixed distance? It is plainly contrary to *Friedman*'s purposes to use separate anodes, and it is in no way beneficial or obvious to separate *Friedman*'s anodes to be adjustably respaceable. See MPEP 2143.01 (subsection entitled "The Proposed Modification Cannot Render The Prior Art Unsatisfactory For Its Intended Purpose"). *The Final Office Action does not address this argument.*

It is therefore seen that *Meijer* does not in any way teach or suggest adjustable spacing – it teaches spacing the counters apart by a distance equal to their diameters – and such fixed spacing is squarely in line with the other prior art of record, including *Friedman*. Independent claims 1, 24, and 39 are therefore submitted to be allowable.

Regarding dependent claims 4-5 and 40-41, note that in both *Friedman* (see FIG. 4) and *Meijer* (see foregoing passages, noting 30 micron thickness for counter 2 and 1.5 mm thickness for counter 5), the anodes are very different (and they have to be different in order to have coupled impedances). Thus, neither reference offers any disclosure or suggestion of the arrangement recited in claims 4-5 and 40-41. The Examiner argues:

As regarding to arguments relating to claims 4-5 and 40-41, the applicants argued that neither reference offers any disclosure or suggestion of the first and second delay line anodes are identical. In response, the examiner cites that *Friedman* in FIG. 1 discloses two identical delay lines arranged orthogonal on different planes.

(Page 6, May 16 2005 Final Office Action.) However, this conclusion is also plainly erroneous and results from overreading the *Friedman* drawings. Note that the caption to FIG. 1 of *Friedman* plainly describes it as being a "schematic" view, and if you then review the adjacent section "II. THEORY OF OPERATION," it notes that FIG. 2 provides further detail – and here the leads

of the delay line are explicitly labeled as being different (210 micron-wide leads spaced by 280-micron distances in the upper anode, and 125 micron-wide leads spaced by 375-micron distances in the lower anode). For even further details, refer to the aforementioned FIG. 4 of *Friedman* and column 2 lines 24-35 of *Meijer*, which very clearly show and describe the extreme differences in prior art anode sets. It is not proper to interpret *Friedman*'s schematic view of FIG. 1 as depicting identical/interchangeable anodes, where the remainder of *Friedman* (and *Meijer* as well very explicitly note that this is not the case. See the foregoing footnote 4.

Regarding claims 10-11 and 44-45: As noted in the Response of April 30, 2004, "flex circuit" is a term of art referring to flexural circuit boards (see, e.g., page 14 lines 1-8, page 18 lines 15-17 of the application). *Friedman* does not disclose the use of flex circuits, and rather teaches the use of rigid "copper-clad" and "ceramic-filled" boards (see page 599) – which are further bonded to a brass plate for even greater rigidity. Consider that use of a flex circuit appears contrary to the prior art since such a circuit, being flexible, would seem to allow easier bending of a portion of an anode so that it would be mis-spaced with respect to the other anode (thus causing the aforementioned impedance mismatch). Thus, neither *Friedman* nor *Meijer* teach or suggest the arrangement recited in claims 10 and 44. Further, even if the boards of *Friedman* and/or *Meijer* are regarded as being even slightly flexible, it does not seem feasible that they could bend to the degree recited in claims 11 and 45.

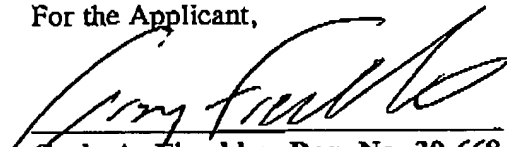
3.b. Section 2 of the Final Office Action: Rejection of Claims 2, 25, 27, and 48-49 under USC §103(a) view of *Friedman et al.* (Multilayer Anode with Crossed Serpentine Delay Lines for High Spatial Resolution Readout of Microchannel Plate Detectors), U.S. Patent 3,581,091 to *Meijer*, and U.S. Patent 3,359,421 to *Perez-Mendez et al.*

Claim 2 is dependent from independent claim 1, claims 25 and 27 are dependent from independent claim 24, and claims 48-49 are dependent from independent claim 39. All are submitted to be allowable for at least the same reasons noted above in Section 3.a of this Response.

4. In Closing

If any questions regarding the application arise, please contact the undersigned attorney. Telephone calls related to this application are welcomed and encouraged. The Commissioner is authorized to charge any fees or credit any overpayments relating to this application to deposit account number 18-2055.

For the Applicant,



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ATTACHMENTS:

- Draft Petition to Withdraw Premature
Final Rejection

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/888,940
Filing Date: June 25, 2001
Applicant(s): GRIBB et al.
Title: DELAY LINE ANODES

Group Art Unit: 2853
Examiner: Nguyen, Judy
Atty. Docket: 66054.002

PETITION UNDER 37 CFR §1.181(a)(1) TO
WITHDRAW PREMATURE FINAL REJECTION
(37 CFR §1.113(a); MPEP 706.07(c))

Group Director, Group 2853
Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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This petition is filed in the above-noted application to withdraw the finality of the May 16, 2005 Office Action.

As per MPEP 1002.02(c), it is understood that this Petition is to be decided by the Group Director of Group Art Unit 2853. If this understanding is incorrect, please forward to the Office of Petitions or the other responsible entity.

1. *Petition Fee (37 CFR §1.17(h))*: No fee is required for this Petition.
2. *Timing of Petition (37 CFR §1.181(f))*: This Petition is filed within two months of the mailing date of the Final Office Action wherein the final rejection is set forth.

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3. *Prior Request for Reconsideration (37 CFR §1.181(c))*: The Applicant requested reconsideration in a Response submitted to the Examiner, which included a draft version of this Petition. A copy of the Response is attached.

4. *Statement of Facts (37 CFR §1.181(b))*: The facts are as follows.

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a. The *Office Action of January 26, 2005* set forth the following rejections:

a.(1) Claims 1-5, 7-8, and 10-11 under 35 USC §112(1) and (2)

a.(2) Claims 1, 3-7, 10, 12, 24, 26, 28, 39-44, and 46-47 under USC §103(a) view of *Friedman et al.* ("Multilayer Anode with Crossed Serpentine Delay Lines for High Spatial Resolution Readout of Microchannel Plate Detectors") and U.S. Patent 3,581,091 to *Meijer*. Here, the USPTO argued (among other things) that FIG. 2 of *Meijer* illustrates and suggests adjustably respaceable anodes (pages 4-5 of January 26, 2005 Office Action).

a.(3) Claims 2, 25, 27, and 48-49 under USC §103(a) view of *Friedman et al.* (Multilayer Anode with Crossed Serpentine Delay Lines for High Spatial Resolution Readout of Microchannel Plate Detectors"), U.S. Patent 3,581,091 to *Meijer*, and U.S. Patent 3,359,421 to *Perez-Mendez et al.*

b. The *Response of March 9, 2005* set forth extensive arguments against the foregoing rejections without amending the claims. In particular, it was argued that the §103 rejections of claims 1, 3-7, 10, 12, 24, 26, 28, 39-44, and 46-47 (wherein claims 1, 24, and 39 are independent claims) were incorrect because:

b.(1) Regarding claims 1, 3, 6, 24, 26, 39, 42, 43, and 47, while the January 26, 2005 Office Action alleged that *Meijer*'s "anodes" 2 and 5 were spaced to be adaptably adjustable, *Meijer* does not in fact show or state this. Rather, column 1 lines 16-22 and column 2 lines 24-37 of *Meijer* explicitly state that the

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Page 2 of 6

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illustrated anodes are spaced by a fixed distance equal to the diameter of the anodes. It was further noted that such spacing was necessary in *Meijer* for the anodes to be operable. Thus, *Meijer* does not in fact provide any motivation to modify *Friedman* to attain the claimed matter. See pages 15-16 of the March 9, 2005 Response.

b.(2) Further regarding claims 1, 3, 6, 24, 26, 39, 42, 43, and 47, the primary reference *Friedman* starts with a pair of separate anodes, but then bonds the two anodes together at a fixed distance precisely to avoid variability in spacing. Thus, the secondary reference *Meijer* could not motivate an ordinary artisan to provide adjustable spacing between anodes because such a modification is contrary to the purposes of *Friedman*. See page 17 of the March 9, 2005 Response.

b.(3) Regarding dependent claims 4-5 and 40-41, passages of *Friedman* and *Meijer* were cited to show that the two anodes discussed therein were not in fact identical or interchangeable, and thus the references did not disclose or suggest the arrangement claimed in claims 4-5 and 40-41. See page 17 of the March 9, 2005 Response.

b.(4) Regarding dependent claims 10 and 44, passages of *Friedman* and *Meijer* were cited to show that the two anodes discussed therein were not made of flexible material, and thus the references did not disclose or suggest the arrangement claimed in claims 10 and 44. See page 17 of the March 9, 2005 Response.

c. The *Final Office Action of May 16, 2005* maintained the §103 rejections, reproducing them verbatim and also providing the following response to Applicant's arguments at page 6:

... the arguments regarding to the 103 rejection have been found not persuasive.

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Page 3 of 6

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First of all, the applicants argued that Meijer does not teach or suggest adjustable spacing between the delay line anodes. The examiner responses that, as broadly interpreted, the claims are understood as the anodes adaptably mounted in a space, wherein the length of the space between the anodes is adjustable. As clearly shown in FIG. 1, since there is no fix structure between the anodes, an anode is free to relatively move from the other. In other words, the space between the anodes can be adjusted.

As regarding to arguments relating to claims 4-5 and 40-41, the applicants argued that neither reference offers any disclosure or suggestion of the first and second delay line anodes are identical. In response, the examiner cites that Friedman in FIG. 1 discloses two identical delay lines arranged orthogonal on different planes.

As regarding to arguments relating to claims 10 and 44, the applicants argued that Friedman does not disclose the use of flex circuit material. However, the applicants did not show why Rt/duroid 6010 ceramic-filled PTFE dielectric is not a flex material. In addition, with the thickness disclosed in the cited prior art, the anode boards are believed to be bendable (flexible). Moreover, the bonding of the anodes on the bass plate only means that the whole structure is not bendable, but does not mean that the anode boards, themselves, are not bendable (flexible).

The final rejection is premature because the Applicant's arguments regarding claims 1, 3-6, 24, 26, 39-43, and 47 - items b.(1)-b.(3) above - are not addressed: the Applicant argued why *Meijer* does not in fact depict adjustably respaceable anodes (citing specific passages of *Meijer* which state this point), and why one would not be motivated to modify *Friedman* to use such an arrangement, *but the Final Office Action is not seen to contain any response to these arguments. We need to know why our arguments were found to be factually or legally deficient, and we need an opportunity to effectively respond.* MPEP 706.07 states that

While the rules no longer give to an applicant the right to "amend as often as the examiner presents new references or reasons for rejection," present practice does not sanction hasty and ill-considered final rejections. The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application. . . . The examiner should never lose sight of the fact that in every case the applicant is

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Page 4 of 6

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entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal.

See also MPEP 707.07(f), Answer All Material Traversed ("Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it"); also see Examiner Notes for PTO form paragraphs 7.37 and 7.38 (as reproduced in MPEP 707.07), which require that all relevant arguments by the Applicant be addressed, as well as MPEP 706.07 under "Statement of Grounds" ("the final rejection . . . also should include a rebuttal of any arguments raised in the applicant's reply"). The Final Office Action does not meet the requirements of the foregoing provisions. It simply states that FIG. 1 (presumably of *Meijer*?) shows adjustably respaceable anodes – but our March 9, 2005 Response set out several points showing that this is not in fact the case. *Why are these points disagreed with?* Unless we know why, we cannot address the Examiner's concerns.

As per 37 CFR §1.181(b), any facts requiring proof are set out in the form of declarations or exhibits accompanying this Petition.

5. **Action Requested (37 CFR §1.181(b)):** It is requested that the Final Office Action and the final rejection therein be withdrawn, and that any maintained rejections be reissued in a new, nonfinal Office Action which fully addresses the Applicant's arguments. If this relief is denied, it is then requested that the action taken provide the Applicant with the "full and fair hearing" noted by MPEP 706.07.

In Closing

If any questions regarding this petition or the application arise, please contact the undersigned attorney. Telephone calls are welcomed and encouraged. The Commissioner is authorized to charge any fees or credit any overpayments relating to this application to deposit account number 18-2055.

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For the Applicant,

ATTACHMENTS:

- Exhibits supporting facts to be proven
(37 CFR §1.181(b))

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,940	06/25/2001	Tye Travis Gribb	66054002	9270

7590 06/14/2005

Intellectual Property Department
DEWITT ROSS & STEVENS, S.C.
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EXAMINER	
NGUYEN, LAM S	

ART UNIT	PAPER NUMBER
2853	

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO/ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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09/888 940

06/25/2001

GRIBB et al.

66054.002

EXAMINER

LAM NGUYEN

ART UNIT

PAPER

2853

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DATE MAILED:


Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

The unsigned petition filed on 05/13/2005 without fee paid is not compliance with USPTO rules of practice. As a result, the petition is not considered.


STEPHEN MEIER
SUPERVISORY PATENT EXAMINER

LN
06/13/2005

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/888,940	Applicant(s) GRIBB ET AL	
	Examiner LAM S. NGUYEN	Art Unit 2853	

-The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

THE REPLY FILED 31 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: In response to the applicants' argument that the final rejection is in error due to not addressing issues raised by the applicants, the examiner states that the final office action addressed all major issues raised by the applicants: The adjustable spacing and the flexural circuit boards. In addition, the applicants' assertion to conclude that Meier did not teach or suggest adjustable spacing "seems to follow from common experience". As a result, this assertion is just attorney argument and not the kind of factual evidence that is required to rebut a prima facie case of obviousness (MPEP 2145).
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

Continuation Sheet (PTOL-303)

Application No.

U.S. Patent and Trademark Office
PTOL-303 (Rev. 4-05)

Advisory Action Before the Filing of an Appeal Brief

Part of Paper No. 20050613

LN
06/13/2005


STEPHEN MEIER
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